RECENT IMPORTANT DECISIONS

BILLS AND NOTES—"FICTITIOUS PAYEE"—PAYEE A PERSON NOT INTENDED TO HAVE ANY INTEREST.—A member of a firm, authorized to sign the firm's name, made checks payable to an existing association, which he did not intend should ever gain possession of or have any interest in such checks, merely for the purpose of obtaining money for himself, which he did by unlawfully indorsing the association's name to the checks. The plaintiff firm now seek to recover the amount of the checks, charged to their account by the defendant bank, and the defense is that the payee was a "fictitious payee" under the NEGOTIABLE INSTRUMENTS STATUTE, Sec. 9 (3), and hence the checks were payable to bearer. The statute provides, "The instrument is payable to bearer * * * when it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable." *Held,* that the defendant bank was not liable, since the checks were made payable to the name of a person not having any interest in, and not intended to become a party to, the transaction, wherefore the payee is a fictitious person under the statute and the checks were payable to bearer. *Mueller & Martin* v. *Liberty Ins. Bank* (Ky., 1920), 218 S. W. 465.

This case adds another jurisdiction to those of New York, Illinois, and Pennsylvania, which hold that the words "fictitious and non-existing," as used in the NEGOTIABLE INSTRUMENTS STATUTE, Sec. 9 (3), include the case of a real person, as payee, not having any right to or interest in the instrument, and who was not intended by the person inserting the name to have any. *Trust Co. of America* v. *Hamilton Bank,* 127 App. Div. 515; *Bartlett* v. *First National Bank of Chicago,* 247 Ill. 490; *Snyder* v. *Corn Exchange National Bank,* 221 Pa. 599. The case also fits in with the desire expressed by Professor Kulp in his article on the "Fictitious Payee," in 18 MICH. L. REV. 296, 310, that the courts of the various states should supply the defect in the NEGOTIABLE INSTRUMENTS STATUTE, by uniformly holding on this question as the New York, Illinois, and Pennsylvania courts have. Otherwise the NEGOTIABLE INSTRUMENTS ACT will fail in making uniform a very troublesome question.

BILLS AND NOTES—RECOVERY OF MONEY PAID BY DRAWEE ON FORGED INSTRUMENT.—One Sumner, as quartermaster in the army, had authority to draw drafts on the Treasurer of the United States. His clerk, Howard, drew such a draft, naming Sumner as payee, and forged Sumner's signature as drawer. He also unauthorizedly indorsed it with Sumner's name and negotiated the draft to a bank which sent it to defendant bank for collection and credit. On presentation to the plaintiff, as drawee, it was paid. Plaintiff, on discovering the forgery, sued to recover the amount paid to defendant. *Held,* one justice dissenting, that plaintiff could not recover. *United States* v. *Chase National Bank* (April 19, 1920), 40 Sup. Ct. 361.

It has long been settled that a drawee who pays on a forged bill cannot recover from a holder in due course. *Price* v. *Neal*, 3 Burr. 1354; NEG. INST. LAW., Sec. 62, "The acceptor * * * admits * * * the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument." *McLendon* v. *Bank of Advance*, 188 Mo. App. 417. The theory generally stated is that the drawee is bound to know the drawer's signature, though there is some conflict as to the proper theory. See 4 HARV. L. REV. 297; WOODWARD, QUASI-CONTRACTS, Sec. 91. The rule applies to the Treasurer of the United States. *United States* v. *Bank of New York*, 219 Fed. 648, L. R. A. 1915, D 797. It is equally well settled that the holder must have had *title* to the instrument, otherwise the drawee can recover the money paid to him, and a forged indorsement does not pass the title to the indorsee. DANIEL ON NEG. INST., Sec. 1364. If, however, the forged indorsement is on the bill when issued by the drawer, it is the drawer and not the indorser through whom the holder derives title. *Hortsman* v. *Henshaw*, 11 How. 177. Also, if the payee named is a fictitious payee, the instrument is payable to bearer. *Governor, etc.*, v. *Vagliano Bros.*, (H. of L.) [1891] App. Cas. 107. As to when a nominal payee is in fact fictitious, see 18 MICH L. REV. 296. The principal case appears to put its decision on the first proposition.

CARRIERS—CUMMINS AMENDMENT AS TO LIMITATION OF LIABILITY.—Action for loss of grain on an interstate shipment in November, 1915, under the uniform bill of lading. This provided that the amount of the loss should be computed on the basis of the value of the property at the time and place of shipment. Plaintiff claimed the value at destination, less freight charges, on the ground that the Cummins Amendment made the above stipulation void. *Held*, that the shipper was entitled to recover the full, actual loss. *C. M. & St. P. Ry. Co.* v. *McCaull-Dinsmore Co.* (U. S., May 17, 1920, —— U. S. ——.

The Cummins Amendment became law in March, 1915, and was largely superseded by the act of August, 1916. This in turn will be succeeded by legislation by the present Congress. The result is that not many cases under the Cummins Amendment have reached or are likely to reach courts of last resort. On previous cases, see 17 MICH L. REV. 183. The present case holds that the Cummins Amendment means what it seems to say, viz., that the carrier is liable to the lawful holder of the bill of lading for the full, actual loss, no matter how he may seek to modify his liability. A similar attitude of the court toward the language of the Carmack Amendment would have prevented most of the litigation reviewed in previous volumes of the REVIEW and probably have avoided the Cummins Amendment and other statutes passed for the very reason that the Carmack Amendment was so emasculated by judicial interpretation. As to the "Transportation Act of 1920," see *U. S.* v. *Alaska S. S. Co.* (U. S., May 17, 1920, per Day, Justice).

CARRIERS—RACE SEGREGATION—APPLICATION TO INTERSTATE CARRIERS OF SEPARATE COACH LAW.—Defendant operates an interstate interurban railway system between Cincinnati, Ohio, and a point six miles distant in the out-